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OFFICE OF PETITIONS

In re Application of
Henry Duong
Application No. 10/669,668
Filed: September 23, 2003
Attorney Docket No.

ON PETITION

This is a decision on the renewed petition under 37 CFR 1.181 to withdraw the holding of abandonment, filed March 5, 2009.

The renewed petition is **DISMISSED**.

The application became abandoned on November 17, 2007, after a proper response was not received to the Notice of Non-Compliant Appeal Brief mailed October 16, 2007, which set a shortened period for reply of one-months from its mailing date. A Notice of Abandonment was mailed April 30, 2008.

In the instant petition, petitioner maintains that the holding of abandonment was improper.

A review of the application file reveals that a Notice of Non-Compliant Appeal Brief was mailed on October 16, 2007. Communications were filed on January 25, 2008, February 19, 2008, and February 22, 2008, none of which were proper responses to the Notice of Non-Compliant Appeal Brief. On May 1, 2008, applicant filed an Appeal Brief and a Notice of Appeal that were not accompanied by the request for extension of time within the fifth month that would have been necessary to make the response timely. The application was properly held abandoned on November 17, 2007, because a proper and timely response to the Notice of Non-Compliant Appeal Brief was not filed within the allowable period. The renewed petition does not present any additional facts or circumstances that would allow the undersigned to reach a different conclusion. The petition is dismissed, accordingly.

It is noted that petitioner indicates that the examiner's purported delay in responding to petitioner's filings contributed to the abandonment of the application. Review of the application file history reveals that the examiner held two telephonic interviews with the petitioner and provided responses to applicant's filings in what is, arguably, a reasonable period. Petitioner is advised that all applicant's are charged with making a *bona fide* effort to diligently and swiftly prosecute the application. Petitioner is charged with a filing a proper and timely response to all Office actions issued. If a reply is ultimately determined to be improper, such does not toll any time period running against the application. The holding of abandonment was properly imposed because neither a proper response to the final Office action nor the Notice of Non-Compliant Appeal Brief was received within the maximum statutory period for reply.

Alternatively, petitioner may revive the application based on unintentional abandonment under 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by the required reply, the required petition fee (\$1,620.00 for a large entity or \$810.00 for a verified


small entity), and a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
United States Patent and Trademark Office
Box 1450
Alexandria, VA 22313-1450

By facsimile: (571) 273-8300
Attn: Office of Petitions

Inquiries regarding the sufficiency of the reply to the Notice of Non-Compliant Appeal Brief should be directed to the Technology Center. Telephone inquiries concerning this decision should be directed to the undersigned (571) 272-3222.


Kenya A. McLaughlin
Petitions Attorney
Office of Petitions